IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

IN RE:	§	
	§	
CLAUDIA LUCILLE WILLIAMS,	§	CASE NO. 97-10649-RLJ-13
	§	
Debtor	§	

CLAUDIA LUCILLE WILLIAMS,	§	
	§	
Plaintiff	§	
	§	
v.	§	ADVERSARY NO. 02-1017
	§	
SALLIE MAE SERVICING	§	
CORPORATION AND GENERAL	§	
REVENUE CORPORATION	§	
	§	
Defendant	§	

MEMORANDUM OPINION

Defendants Sallie Mae Servicing Corporation and General Revenue Corporation (collectively Sallie Mae) move for dismissal of this adversary proceeding under Rule 12(b)(6), Federal Rules of Civil Procedure, and Rule 7012, Federal Rule of Bankruptcy Procedure, on the basis that the complaint of Claudia Lucille Williams (Williams) fails to state a claim on which relief may be granted. Williams, the plaintiff here and debtor in the underlying bankruptcy case, has not responded to the motion. Williams's complaint seeks an order of contempt and sanctions against Sallie Mae for Sallie Mae's attempts to collect student loan debt allegedly owed by Williams to Sallie Mae.

This court has jurisdiction of this matter under 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b). This Memorandum Opinion contains the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052.

Background

At issue are Williams's prepetition government student loans, held and serviced by Sallie Mae. Williams filed her Chapter 13 case on July 29, 1997. On October 14, 1997, Sallie Mae filed a proof of claim in the amount of $9,704.90. Williams filed an objection to Sallie Mae's claim on April 21, 1998. Sallie Mae failed to respond to the objection, and the court entered an order on June 8, 1998, whereby the court allowed an unsecured nonpriority claim in the amount of $4,125 and disallowed the balance of $5,579 because of Sallie Mae's failure to provide proper documentation with the proof of claim. The court confirmed Williams's plan on August 14, 1998. Williams apparently made the payments required by her plan as she was granted a discharge on August 5, 2002. Neither the order disallowing Sallie Mae's claim in part, nor the order confirming Williams's plan, bars Sallie Mae from collecting the disallowed portion of its claim.

The acts complained of by Williams consist of letters sent to her by Sallie Mae in August, October and November 2002. The earliest such letter was sent by Sallie Mae to Williams on August 28, 2002. These letters seek collection of that portion of Sallie Mae's claim that the court disallowed. Williams's counsel contacted Sallie Mae and its counsel on several occasions, informing Sallie Mae that the debt claimed due was disallowed by the court, and that Williams had received a discharge. Sallie Mae continued its attempts to collect on its debt after Williams's counsel informed it of the court's order and of Williams's discharge. Williams therefore alleges

that Sallie Mae's actions violated the automatic stay, and that the court should hold Sallie Mae in contempt, as well as award sanctions and attorney's fees. The basis of Williams's action is not necessarily that Sallie Mae's claim was discharged, but that "$5,579.00 of the claim amount was disallowed by this Court and therefore is not owed by the Plaintiff." Debtor's Complaint for Contempt Order and Sanctions Against Creditor ¶ 10.

Sallie Mae argues that Williams has failed to state a claim because Williams's debt for student loans was not discharged in her Chapter 13 case, and because the order disallowing a portion of Sallie Mae's claim is irrelevant in determining whether the claim is discharged. Sallie Mae contends that Williams remains liable for the $5,579 and that, accordingly, Sallie Mae committed no unlawful or improper acts by seeking to collect on the claim.

Discussion

If, on a motion to dismiss for failure to state a claim, the court considers matters or evidence outside the motion, the motion is treated as one for summary judgment and disposed of as provided for by Rule 56. *See* FED. R. BANKR. P. 7012; FED. R. CIV. P. 12(b). In this case, the court considers Sallie Mae's affidavit, exhibits attached to Williams's complaint, and pleadings and documents filed both in this adversary as well as the underlying case. Consequently, the court treats the motion as one for summary judgment. *See, e.g., Washington v. Allstate Ins. Co.*, 901 F.2d 1281, 1283-84 (5th Cir. 1990).

The court is not required to hold a hearing on a motion for summary judgment. *See Jackson v. Widnall*, 99 F.3d 710, 713 (5th Cir. 1996). The court may not take action on the motion, however, until the motion has been served, and the opposing party has had at least ten days to respond. *See id.* In the present case, the appropriate response period is twenty days, as

the local rules provide that a "response and brief to an opposed motion must be filed within 20 days from the date the motion is filed." N.D. TEX. R. 7.1(e). *Accord N.D. TX L.B.R.* 7007.1(a). As noted, Williams failed to file any response. Williams has been provided with sufficient procedural safeguards concerning the motion. *See Washington*, 901 F.2d at 1284.

Though Williams failed to respond to the motion, the court may not grant the motion, or otherwise grant summary judgment, by default. *See John v. State of La.*, 757 F.2d 698, 707 (5th Cir. 1985). The movant must meet his initial burden of demonstrating that no genuine issue concerning any material fact exists, and that judgment is warranted as a matter of law, notwithstanding the nonmovant's failure to file a response. *See id.* at 708. If the movant meets his initial burden, the nonmovant cannot survive summary judgment by resting on the mere allegations of his pleadings. *See Isquith v. Middle S. Utils. Inc.*, 847 F.2d 186, 199 (5th Cir. 1988). The court may accept as undisputed the facts listed by the movant in support of his motion. *See Eversley v. Mbank Dallas*, 843 F.2d 172, 174 (5th Cir. 1988); *Roberts v. Willow Distribs. Inc.*, 967 F. Supp. 904, 906 (N.D. Tex. 1997). Summary judgment is appropriate when the pleadings and evidence show that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). *Accord Peter v. GC Servs. L.P.*, 310 F.3d 344, 348 (5th Cir. 2002).

Sallie Mae has met its burden of demonstrating the absence of any genuine issue as to any material fact. None of the evidence presented by Sallie Mae demonstrates any factual dispute. *See John*, 757 F.2d at 712 (reversing grant of summary judgment because "the very evidence cited by defendants in their motion for summary judgment reveals a question of fact"). Moreover, Williams's failure to respond to the motion means that Sallie Mae's facts are

uncontested. *See Roberts*, 967 F. Supp. at 906. The court should accept as true and undisputed, therefore, the facts relied upon by Sallie Mae in the motion. As there is no genuine issue as to any material fact, the question is whether Sallie Mae is entitled to judgment as a matter of law.

In this context, the issues are: (1) whether Sallie Mae committed any act in violation of the automatic stay; and (2) whether Sallie Mae is otherwise precluded from collecting on its claim.

With respect to the first issue, Sallie Mae committed no act in violation of the automatic stay as alleged by Williams. The automatic stay provided by section 362 terminates once a Chapter 13 debtor receives a discharge. 11 U.S.C. § 362(c)(2)(C) (2002). Williams received her discharge on August 5, 2002. All of the evidence concerning allegedly improper acts that has been presented to the court demonstrates that such acts occurred after this date. Williams presented no evidence to the contrary. Thus, as a matter of law, Sallie Mae committed no acts in violation of the automatic stay because such acts occurred after the termination of the automatic stay, even assuming that such acts are acts otherwise prohibited by the stay. *See id.*

With respect to whether Sallie Mae was precluded from collecting on its disallowed claim, the issue is whether such claim was or was not discharged in Williams's Chapter 13 case. Since Sallie Mae's claim was for a governmental student loan, such loan is nondischargeable in the absence of an adversary complaint and order specifically holding such claim dischargeable. *See* 11 U.S.C. §§ 1328(a)(2); 523(a)(8). Williams filed no adversary complaint to discharge her student loan debt. Additionally, the confirmed plan does not prohibit Sallie Mae from collecting the disallowed portion of the claim. In other words, though Sallie Mae's claim is normally

nondischargeable, nothing in the plan altered this result. Thus, Sallie Mae's claim for $5,579.90 was not discharged by virtue of Williams's discharge.

Nevertheless, Williams argues that she does not owe this amount to Sallie Mae because the court disallowed this portion of Sallie Mae's claim. Williams's argument is without merit. In *Woods*, the Fifth Circuit considered a case with a similar factual pattern. *Woods v. United Student Aid Funds Inc. (In the Matter of Woods)*, 233 F.3d 324 (5th Cir. 2000). There the debtor filed for Chapter 13, completed his plan payments, and received a discharge. *See id.* at 324-25. The student loan creditor filed an untimely proof of claim, which the bankruptcy court accordingly denied. *See id.* at 325. The creditor neither attended the hearing on the proof of claim, nor appealed the court's ruling. *See id.* Because the court disallowed the claim, the debtor made no payments on such claim through his plan. *See id.* However, the plan provided for full repayment to all holders of nonpriority unsecured claims, including the student loan debt listed on the debtor's schedules. *See id.* Post-discharge, the creditor attempted to collect on the student loan debt. *See id.* at 324. The debtor then initiated an adversary proceeding seeking a declaratory judgment that the student loan debt had been discharged on the grounds that her plan provided for full repayment of the student loan debt, and that section 1328(a) provides for a discharge "of all debts provided for by the plan." *Id.* at 325.

The Fifth Circuit affirmed the bankruptcy court, which held that the student loan debt had not been discharged. *See id.* While a creditor is bound to the repayment scheme during the pendency of a plan, the creditor is "not estopped from pursuing any deficiency on the nondischargeable debt." *In the Matter of Woods*, 1999 WL 1124784 *1 (E.D. La. 1999), *aff'd*, 233 F.3d 324, 325 ("It would serve no useful purpose to restate the well-written opinion of the

district court judge"). Since the student loan debt had not been discharged – notwithstanding the disallowance of the claim or the plan's treatment of such debt – nothing prevented the creditor from collecting on its claim. *See In the Matter of Woods*, 233 F.3d at 325. With respect to the issue of disallowance of the claim, the district court stated:

> This court will not confuse the concept of claim disallowance under section 502(b)(2) with the concept [of] nondischargeability under Section 523(a)(8) and 1328(a)(2). Section 502(b)(2) does not proscribe recovery from the debtor personally for nondischargeable debts that are not paid from the bankruptcy estate. While the discharge provision of Section 1328 generally discharges all debts provided for by the plan or disallowed under Section 502, student loan debts are specifically excepted from discharge.

In the Matter of Woods, 1999 WL 1124784 at *2, *aff'd*, 233 F.3d at 325.

Similarly, the court in *Bell* concluded that the portion of the student loan creditor's claim that had been disallowed by prior order of the court was not discharged. *Bell v. Educational Credit Mgmt. Corp. (In re Bell)*, 236 B.R. 426 (N.D. Ala. 1999). The court considered the debtor's argument that disallowance of the claim precluded the creditor from subsequently collecting on such claim. *See id.* at 430. In a well reasoned opinion, the court rejected this argument. *See id.* The court noted that "[t]here is a fundamental difference between the 'debt' and the 'claim.' Claim allowance and debt liability are different concepts." *Id.* Additionally, the court noted that the burden is on the debtor to initiate an adversary action to have student loan debt deemed dischargeable. *See id.* at 429. Finally, the court noted that the elements of whether a student loan debt is dischargeable were not considered by the bankruptcy court in the claims objection process. *See id.* at 428. Thus, "[t]here has never been a court determination that repayment of the debt would place an undue hardship on" the debtor. *Id.* Accordingly, the court held that the disallowed portion of the student loan claim was not discharged or otherwise

rendered unenforceable by virtue of the court's disallowance of such claim, and that the creditor had every right to seek payment after discharge. *See id.* 428-29. *Accord In re Loving*, 269 B.R. 655, 662-63 (Bankr. S.D. Ind. 2001).

Finally, a careful reading of the Code confirms this conclusion. Section 1328 provides for a "discharge of all debts provided for by the plan or disallowed under section 502 of this title, *except any debt* . . . of the kind specified in paragraph (5), (8), or (9) of section 523(a)." 11 U.S.C. § 1328(a)(2) (2002) (emphasis added). A Chapter 13 discharge, therefore, extends to claims 'disallowed under section 502.' *See id.* Yet it is not the *disallowance* of a claim that discharges liability on such claim; section 1328 merely provides for a discharge on a disallowed claim when such claim is otherwise dischargeable. *See id.* The discharge under section 1328(a) does not apply in the case of a nondischargeable debt 'of the kind specified in' paragraph 8 of section 523(a). *See id.* Paragraph 8 of section 523(a) speaks to student loan debts of the type at issue in the case at bar. *Id.* § 523(a)(8). Thus, section 1328 clearly provides that a student loan claim that is disallowed is not discharged. *See In the Matter of Woods*, 1999 WL 1124784 at *2, *aff'd*, 233 F.3d at 325. Moreover, the disallowance itself is not a discharge.

Conclusion

Upon the foregoing authorities, the court finds that, as a matter of law, Sallie Mae's actions did not violate the automatic stay and that its claim of $5,579 was not discharged. Summary judgment is granted in favor of Sallie Mae. Any remaining matters will be considered at the court's May 7, 2003 docket.

SIGNED May 2, 2003.

ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE